

## LEGISLATION ON GUN CONTROL IN THE FEDERATION OF MALAYSIA

The Arms Act of 1960, as amended by the Arms (Amendment) Act of 1974, the Firearms (Increased Penalties) Act of 1971 as amended by the Firearms (Increased Penalties) (Amendment) Act of 1974, and the Essential (Security Cases) Regulations of 1975, issued under the Emergency (Essential Powers) Ordinance of 1969, all pertain to the topic of gun control legislation in the Federation of Malaysia.

The Arms Act as it now stands prohibits any person from having in his possession, custody or control any arms or ammunition unless he is the holder of an arms license in that behalf granted to him under the provisions of the act.

Section 4 of the act stipulates that arms licenses must be applied for in the prescribed form submitted to the Chief Police Officer of the state of the Federation of Malaysia in which the applicant resides, and that the application must contain certain particulars. The Chief Police Officer may grant to an applicant either an arms license or an arms permit, if satisfied that he has a good reason for having in his possession, custody, or control, or for carrying and using, as the case may be, the arms and ammunition in respect of which the application is being made, and satisfied also that the applicant can be authorized in that behalf without danger to the public safety or the public interest.

An arms license is granted to a person to have in his possession, custody or control any arms or ammunition specified therein.

An arms permit is granted a person to carry and use arms or ammunition in accordance with the terms specified therein, provided that there is in force an arms license, in respect to the arms and ammunition, granted to some other person.

It is stipulated in Section 4(3), that the arms license or permit is to specify the conditions and restrictions subject to which it is held, the nature and number or other identification mark of the arms to which it relates and, with respect to ammunition, the quantities authorized to be held at any one time thereunder, and such other matters as may be prescribed. The particulars of arms licenses and permits are entered in a register maintained by the Chief Police Officer of each state in the Federation.

Section 5 of the act lays down that arms licenses are not to be granted or renewed for the following:

- (a) a pump or repeating shot gun of any kind, unless the magazine of such gun is so constructed or permanently plugged as to render it incapable of firing more than one cartridge at each pressure of the trigger or, in the case of a double-barrelled gun, one cartridge from each barrel;
- (b) an arm that is so designed or adapted that if pressure is applied to the trigger missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty;
- (c) any arm of any description designed or adapted for the discharge of any noxious liquid, gas or other thing;
- (d) any grenade or bomb or other like missile;

- (e) any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing. 1/

The same section provides that no arms license or arms permit is to be granted or renewed to a person under the age of eighteen. This may however be waived under exceptional circumstances at the discretion of the Chief Police Officer of the state in which the applicant resides.

Those persons exempted from the provisions of the act requiring arms licenses or arms permits for the possession, custody or control of arms or ammunition are described in Section 6 of the act as being:

(a) a licensed dealer or licensed repairer or any servant thereof acting in the course of his employment, in the ordinary course of business as such dealer or repairer, and in accordance with the terms of such dealer's or repairer's license;

(aa) a licensed manufacturer or any servant thereof acting in the course of his employment, in the ordinary course of business as that manufacturer, and in accordance with the terms of that manufacturer's license;

(b) a person lawfully carrying on the business of an auctioneer or carrier or a servant of such a person acting in the course

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Acts Passed During the Year 1960, Kuala Lumpur, Government Printer, 1961, p. 171.

of his employment, provided that the auctioneer or carrier has obtained permission in writing from a Chief Police Officer to sell by auction or to convey arms and ammunition, and also provided that the auctioneer, carrier or servant complies with all conditions and observes all restrictions subject to which such permission is granted;

(c) a person licensed to import or export arms or ammunition or any servant or agent of such person, with respect to arms or ammunition to be imported or exported under such license in such manner as may be reasonably required for such import or export;

(d) any member of the Armed Forces, police officer, or other person engaged in performing police duties in accordance with any written law, or any person in Federal or state government service in the course of his duty;

(e) a crew member or passenger in a vessel or aircraft in regard to arms and ammunition which are part of the ordinary armament or equipment thereof, or which are in or on the vessel or aircraft and required for its services;

(f) a user of a miniature rifle in a rifle range or shooting gallery conducted with the permission of the Chief Police Officer of the state and arms and blank ammunition used at a theatrical performance or rehearsal or athletic meeting, provided permission has been obtained for such use.



Under Section 9, any person who in contravention of the provisions of this act has in his possession, custody or control, or carries or uses any arm or ammunition without an arms license or arms permit in that behalf, or otherwise than as authorized by the license or permit or, in the case of ammunition, in excess of the quantities authorized, or who fails to comply with the conditions or restrictions subject to which the license or permit is held by him, is liable for any such contravention to imprisonment for up to seven years or fine up to M\$10,000, or both.

Restrictions are also imposed by the Arms Act on dealing in arms and ammunition, which cannot be done without a license, except for certain cases such as authorized sales by auction. The repair of arms or ammunition is also not permitted except under license. Licenses granted may be to deal in arms and ammunition only, to repair arms and ammunition only, or combined both to deal in and to repair arms and ammunition. A licensed manufacturer may also keep arms or ammunition manufactured or to be used for manufacturing under his license without holding a dealer's license.

The Arms Act in addition prohibits the sale and transfer of arms or ammunition except to a licensed dealer or licensed repairer or other person entitled under the act. No person is knowingly to accept delivery of arms or ammunition unless he holds a valid license authorizing him to purchase or acquire such arms or ammunition, or

unless he is otherwise entitled under this act or by virtue of any license or permit granted to him thereunder to have possession, custody or control thereof. Contravention of the provisions of this section makes the person liable to imprisonment for a term of up to two years or a fine of up to M\$2,000 or both imprisonment and fine.

Licenses to purchase or obtain or transfer arms and ammunition are issued by the Chief Police Officer of the state in which the applicant resides, but where the applicant is a person who holds, or who is at the same time applying for a license to manufacture arms or ammunition, the license must be issued by the Minister in charge.

Section 13A of the act prohibits any person from manufacturing any arm or ammunition unless he is the holder of a valid license to manufacture arms or ammunition granted to him by the Minister in charge. Such licenses may impose conditions and restrictions including specifications of the type and quantities the license-holder is authorized to manufacture, and the security measures to be taken at the place of manufacture.

Any person manufacturing an arm or ammunition without a valid license to do so or in contravention of a condition imposed regarding the type or quantities of arms or ammunition he is authorized to manufacture is liable to punishment with death, or imprisonment for life and whipping with not less than six strokes. In the case of a company, firm, society or body of persons, the prescribed punishment is a fine not to exceed M\$500,000.

A licensed manufacturer failing to comply with any other condition or restriction imposed by the license is liable to a fine of up to M\$25,000, or in the case of a company, firm, society or body of persons, up to M\$100,000.

The import and export of arms and ammunition into and from the Federation of Malaysia is permitted only under license. Licenses to import or export arms or ammunition must be applied for to the Chief Police Officer of the state of the applicant, but it is stipulated that where the applicant is a person who holds or is applying at the same time for a license to manufacture arms or ammunition, the application must be made to the Minister in charge.

Magistrates, gazetted police officers, or Officers in Charge of a Police District are empowered to authorize by warrant any person named therein or any police officer to search a specified house or other building, vessel, aircraft or vehicle and to search all persons found there, to seize and detain arms or ammunition found in such search, and to arrest any person there whom such an officer suspects to be about to commit or to be committing an offense against the Arms Act. The authorizing magistrate or officer must first be satisfied that a person residing within his jurisdiction has in his possession, custody or control arms or ammunition in contravention of the act or in contravention of the provisions of a license or permit in respect of arms or ammunition, or that arms or ammunition are in or on any

house, or place or vessel, aircraft or vehicle in contravention of the act's provisions or of a license and permit issued under the act. Search warrants may also be issued against persons. The power to enter and remain on places to ascertain whether a person using arms or ammunition has a license or permit to do so is granted by Section 29 to police officers. By the provisions of Section 46, furthermore, any police officer may stop and search for arms, ammunition or imitation arms any person whom he may find in any street or other public place at any hour of the day or night who acts in a suspicious manner or whom he may suspect of having any arms, ammunition or imitation arms in his possession.

The general penalty prescribed by the act for any person who contravenes or fails to comply with any provision thereof or of any regulation made thereunder, and for which no special penalty has been provided, is imprisonment for a term not exceeding one year or a fine not exceeding M\$2,000 or both such imprisonment or fine, according to Section 49.

The Firearms (Increased Penalties) Act of 1971, as amended by the Firearms (Increased Penalties) (Amendment) Act of 1974, is of relevance also inasmuch as it penalizes the use of guns in the commission of certain offenses. The act provides that a person who at the time of committing or attempting to commit or abetting the commission of a scheduled offense discharges a firearm with intention to cause



death or hurt, even though no hurt is caused, is to be punished with death (Section 3). Section 3A adds that where, with intent to cause death or hurt to any person, a firearm is discharged by a person at the time of committing or attempting to commit or abetting the commission of a scheduled offense, each of his accomplices in the offense present at the scene and who may reasonably be presumed to have known that the person was carrying or had in his possession or under his custody or control the firearm shall, notwithstanding that no hurt is caused by the discharge of the firearm, be punished with death, unless he proves all reasonable steps were taken to prevent the discharge.

Additionally, any person who at the time of his committing or attempting to commit or abetting the commission of a scheduled offense has on his person a firearm is to be punished with life imprisonment and with whipping with not less than six strokes, according to Section 5. A person trafficking in firearms is to be punished with death or imprisonment for life and with whipping with not less than six strokes. Anyone proved to be in unlawful possession of more than two firearms is presumed to be trafficking in firearms. Anyone in unlawful possession of a firearm is liable to be punished with imprisonment for up to fourteen years and with whipping with not less than six strokes.

A person consorting with, or found in the company of another person who is in unlawful possession of a firearm in circumstances which raise a reasonable presumption that he knew the other person was in unlawful possession of the firearm, unless he can prove that he had reasonable grounds for believing that the other person was not in unlawful possession thereof, may be punished with imprisonment for a term which may extend to fourteen years and with whipping with not less than six strokes.

The crimes listed in the schedule, i.e., the scheduled offenses referred to above, are extortion, robbery, preventing or resisting by any person of his own arrest or the arrest of another by a police officer or any other person lawfully empowered to make the arrest, escaping from lawful custody, abduction or kidnapping under Sections 363-367 of the Penal Code and Section 3 of the Kidnapping Act of 1961, and house-breaking or house-trespass under Sections 454-460 of the Penal Code.

The Essential (Security Cases) Regulations of 1975, issued under the Emergency (Essential Powers) Ordinance of 1969, provide that in a security case relating to any firearm or explosive, it shall not be necessary to prove that the firearm or explosive was in a serviceable condition or otherwise capable of being used for the purpose for which it is designed.

A security case is defined as meaning a case where a person is charged with a security offense, or a case in respect of which the Public Prosecutor has furnished a certificate that the case is a proper one to be dealt with and tried in accordance with the provisions of these Regulations and the orders made thereunder. A security offense means an offense specified in the Schedule or an offense in relation to which the Public Prosecutor has furnished a certificate as above. The certificate is furnished by the Public Prosecutor personally where any person is suspected or accused of or charged with any offense other than an offense specified in the Schedule. The scheduled offenses are: all offenses under the Internal Security Act of 1960 and all offenses under the Firearms (Increased Penalties) Act of 1971.

It should be noted that the Malaysian Penal Code also contains sections pertaining to the possession of guns during the commission of offenses against the public tranquility. Section 144 of the Code states that any person who attends, takes part in or is found at any unlawful assembly and who has in his possession at such assembly any firearm or ammunition is liable to punishment or imprisonment for a term which may extend to two years, or with fine, or with both. Section 148 provides that any person who attends, takes part in or is found at any riot

and who has in his possession at such riot any firearm or ammunition is punishable with up to five years imprisonment, or with fine, or with both.

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